



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 05359-99

21 March 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: RADM [REDACTED], USNR [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 17 Aug 99 w/attachments
(2) Reserve Starstats Jan 00
(3) DCNO(N00F) original memo dtd 28 Jan 00
(4) Subject's ltr dtd 29 Feb 00
(5) DCNO(N00F) revised memo dtd 16 Mar 00

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show the effective date for pay of his promotion to the grade of rear admiral, pay grade O-8, as that of his running mate, 1 June 1999. As shown in enclosure (2), page 4, his current effective date (referred to by Petitioner and enclosure (2) as "effective date of rank") is 1 August 1999, while his current date of rank already has been established as 1 June 1999.

2. The Board, consisting of Messrs. Ensley and Schultz and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 16 March 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner contends that as a TAR (training and administration of reserves) flag officer, his promotion (assignment of date of rank) is governed by the running mate system under title 10, United States Code (U.S.C.), section 14306 (attachment 1 to enclosure (1));

that following his selection to pay grade O-8, his assigned running mate was promoted to rear admiral with a date of rank of 1 June 1999; that as a reserve component flag officer on active duty for over 180 days, he counted against the limitations of 10 U.S.C. 526 (attachment 2 to enclosure (1)); that at the time of his running mate's promotion, only one number (vacancy) existed for O-8 under section 526; that it was not until 1 August 1999 that the next available O-8 vacancy opened under the limitations of section 526; and that under 10 U.S.C. 14308(d) (attachment 3 to enclosure (1)), his date of rank should be the same as that of his running mate, 1 June 1999. As clarified above, his date of rank has been established as 1 June 1999; it is the effective date for pay that currently stands as 1 August 1999.

d. In the original advisory opinion at enclosure (3), the Deputy Chief of Naval Operations (DCNO) N00F, the flag officer management office, commented that Petitioner's "promotion was handled in accordance with Title 10 and Navy policies." N00F stated that "The running mate system ensures equitable promotion zones for active and reserve officers" and that "Under Section 14308, reserve officers are assigned an 'effective date of rank' based on the date of rank of their active duty running mate" but that "a vacancy must exist for the officer to be promoted." N00F further stated that at the time of Petitioner's promotion, he was serving on the reserve active status list (RASL); that no vacancy existed within the statutory limitation on officers serving at the two-star (pay grade O-8) level; and that Petitioner was promoted on 1 August 1999, when a vacancy occurred.

e. Enclosure (4) is Petitioner's response to the original DCNO (N00F) opinion, in which he agreed that at the time his running mate was promoted, there was only one vacancy under the limitations specified under section 526, and he further agreed that he filled the first available vacancy which occurred on 1 August 1999. However, he contended that his status as a TAR flag officer created a "differing characteristic" between himself and his active duty list (ADL) and RASL counterparts. He stated that ADL flag officers wait for a vacancy within ADL limitations (section 526) which determines their date of rank; that RASL flag officers, except TAR, wait for a vacancy within RASL limitations (10 U.S.C. 12004) which determines their date of rank; and that he differed, in that he was an RASL officer selected for promotion under a running mate system who had to wait for an ADL vacancy to occur because he had been on active duty for over 179 days. He noted that section 14308(d), which deals with promotion of officers with running mates, states "The effective date of the promotion of that officer should be the same as that of the officer's running mate in the grade to which the running mate is promoted." He stressed that this provision makes no mention that a vacancy must also be available. He contended that he is "entitled to...the same DOR [date of rank] and entitlements based on that DOR as [his] running mate."

f. After reviewing Petitioner's response at enclosure (4) to their original opinion, N00F issued the revised opinion at enclosure (5), reflecting "no objection to the adjustment of [Petitioner's] effective date of rank by [this Board]." N00F stated that his effective date of rank of 1 August 1999 was assigned to maintain section 526 numerical limitations on flag officers; and that this Board could retroactively assign him a date of rank matching that of his running mate in accordance with section 14308.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of Petitioner's letter at enclosure (4) and the revised favorable advisory opinion at enclosure (5), the Board finds the existence of an injustice warranting the requested relief, specifically, changing Petitioner's effective date in the grade of rear admiral to 1 June 1999. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected, where appropriate, to show his effective date for pay in the grade of rear admiral, pay grade O-8, as 1 June 1999, rather than 1 August 1999.

b. That any material or entries inconsistent with the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That a copy of this Report of Proceedings be filed at an appropriate location in Petitioner's naval record, and that another copy of this report be returned to this Board, together with any material directed to be removed from Petitioner's record, for retention in a confidential file maintained for such purpose.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

Carolyn Beers



5359-99

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

5800
N00F
16 MAR 00

MEMORANDUM FOR BCNR COORDINATOR (PERS-00ZCB)

Subj: ADVISORY OPINION IN THE CASE OF
RA [REDACTED] USNR

1. Rear Admiral [REDACTED] effective date of rank of 1 August 1999 was assigned in order to maintain Title 10 Section 526 numerical limitations on flag officers. The Board for Correction of Naval Records could retroactively assign a date of rank that match [REDACTED] running mate in accordance with Title 10 Section 14308. I have no objection to the adjustment of [REDACTED] effective date of rank by the Board for Correction of Naval Records.

[REDACTED]

Special Assistant for
Flag Officer Management
and Distribution